

§ 40.295

§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

(a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP, you must not seek a second SAP's evaluation in order to obtain another recommendation.

(b) As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, as an employer you may not rely on it for any purpose under this part.

§ 40.297 Does anyone have the authority to change a SAP's initial evaluation?

(a) Except as provided in paragraph (b) of this section, no one (*e.g.*, an employer, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.

(b) The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (*e.g.*, from an education or treatment program).

§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?

(a) As a SAP, upon your determination of the best recommendation for assistance, you will serve as a referral source to assist the employee's entry into an education and/or treatment program.

(b) To prevent the appearance of a conflict of interest, you must not refer an employee requiring assistance to your private practice or to a person or organization from which you receive payment or to a person or organization in which you have a financial interest. You are precluded from making refer-

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als to entities with which you are financially associated.

(c) There are four exceptions to the prohibitions contained in paragraph (b) of this section. You may refer an employee to any of the following providers of assistance, regardless of your relationship with them:

(1) A public agency (*e.g.*, treatment facility) operated by a state, county, or municipality;

(2) The employer or a person or organization under contract to the employer to provide alcohol or drug treatment and/or education services (*e.g.*, the employer's contracted treatment provider);

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program (*e.g.*, the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or

(4) The sole source of therapeutically appropriate treatment reasonably available to the employee (*e.g.*, the only treatment facility or education program reasonably located within the general commuting area).

§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?

(a) As a SAP, after you have prescribed assistance under § 40.293, you must re-evaluate the employee to determine if the employee has successfully carried out your education and/or treatment recommendations.

(1) This is your way to gauge for the employer the employee's ability to demonstrate successful compliance with the education and/or treatment plan.

(2) Your evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.

(b) As the SAP making the follow-up evaluation determination, you must:

(1) Confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and

(2) Conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates